

# WETLANDS COUNCIL

## MINUTES

April 11, 2017

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The Wetlands Council met on Tuesday, April 11, 2017 in Rooms 112, 113, 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Jim Gove, Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling and Bob Wolff

**Absentees:** Councilors: Sheridan Brown

Also present was: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present. Councilor Gove was introduced as the new member to the Council representing the Construction Industry. It was noted other council members are awaiting processing of their reappointment.

### 1. Approval of Minutes

- *Councilor Snelling made a motion to approve the February 14, 2017 meeting minutes, second by Councilor Wolff. Motion passed unanimously with Councilors Gove and Henderson abstaining.*

### 2. Public Input: None

### 3. Status of Appeals

Paula Scott, Appeals Clerk

## I. New Appeals

### Docket No. 17-02 WtC (PNA) - Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD

Hearing Officer: Not assigned

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter. February 17, 2017 received Revised Notice of Appeal. March 3, 2017 issued Receipt of Revised Appeal letter. This Appeal appears to be insufficient – no indication a copy was served on the Department. Council to accept or decline Appeal at April 11, 2017 meeting.

- *Councilor Henderson made a motion to deny acceptance of the Appeal, second by Councilor Prescott. Motion passed unanimously.*

### Docket No. 16-20 WtC – Matthew and Katherine Lowrie, et al. Appeal

Subject: 9/12/16 approval of Wetlands Restoration Plan for McCarthy Subdivision, LRM file #2015-02245 (EMD3009)

Hearing Officer: Not assigned

Status: October 12, 2016 received Petition for Appeal and Appearance for Sherilyn Young. November 1, 2016 received Motion to Summarily Dismiss Petition. 11/14/16 issued receipt of Appeal letter. 11/14/16 received Objection to Motion to Summarily Dismiss. 11/17/16 received Appearance of Richard Head. 11/23/16 received McCarthy's Reply to Appellants' Objection to Motion to Motion for Summary Dismissal. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to

accept or deny the Appeal. December 13, 2016 the Council voted to table the appeal for their Attorney's opinion. Chairman Kimball has spoken with Counsel and it needs to be further reviewed so it will be pushed back another month. January 10, 2017 Council voted to table the Appeal until February for their attorney's opinion as memo from AGO not ready. 1/20/17 received Appearance from Atty. Brooks and Memorandum in Support of Motion to Summarily Dismiss Petition for Appeal. 1/26/17 received Appellants' Response to DES' Memorandum in Support of Motion for Summary Dismissal. Council to accept or decline the appeal at the February meeting. February 14, 2017 Council voted to not accept the Appeal. 2/22/17 issued Ruling on Acceptance of Appeal and Motion to Summary Dismissal. March 13, 2017 received Appellants' Motion for Rehearing and to Reconsider Order of February 22, 2017. 3/17/17 received Objection to Appellants' Motion for Rehearing and to Reconsider Order of Feb. 22, 2017. 3/22/17 received McCarthys' Objection to Appellants' Motion for Rehearing and to Reconsider Order of Feb. 22, 2017.

***Councilor St. Pierre made a motion that the Council approve Reconsideration, rescind approval of the Motion to Summarily Dismiss, and accept the Lowrie-Pasculano appeal. Motion died for a lack of a second. Discussion was held.***

Chairman Kimball noted no new facts or findings of law.

Councilor Slack arrives at 9:15 a.m.

- ***Councilor Henderson moved to deny the Reconsideration, second by Councilor Gove. Discussion was held. Motion passed with 2 nay votes.***

#### **Docket No. 16-17 WtC Robert C. Brown Appeal**

Subject: 8/19/16 permit #2009-01521

Hearing Officer: Not assigned

Status: September 19, 2016 received Petition for Appeal and Motion to Extend Time. November 21, 2016 issued receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 Council voted to issue a ruling declining to accept Appeal as untimely filed. 12/12/16 received letter dated December 9, 2016 from Appellant. Council needs to issue ruling declining to accept Appeal. 12/29/16 received letter dated December 28, 2016 from Appellant. Discussion was held to clarify the 30 days according to the statute and interpretation. Councilor St. Pierre is to send the 2013 Supreme Court ruling he found to Chairman Kimball. It was decided to have legal counsel review. He will also send the ruling to Council Clerk to be sent to the total Council. January 10, 2017 Council decided to get opinion from their attorney. February 14, 2017 Council voted to rescind 12/13/16 vote of untimely filed and issue Rulings on Timeliness of Appeal and Motion to Extend Time. 2/15/17 issued Insufficient Appeal letter. March 17, 2017 received Revised Notice of Appeal. 3/21/17 issued receipt of Revised Notice of Appeal. This appeal still appears to be insufficient. Council to accept or decline Appeal at April 11, 2017 meeting.

Chairman Kimball reviewed the refiling of deficiencies and the rules that apply.

- ***Councilor Lievens moved to accept provisionally giving him 10 days to say that there was no transmittal letter and certify that he sent the prior copies and whatever response he has here, to the town of Meredith and Atty. Brooks, second by Councilor Snelling. Motion passed unanimously.***

Chairman Kimball to get the decision to the Appeals Clerk.

## **II. Decisions that need to be written/finalized and issued.**

#### **Docket No. 15-12 WtC – N. Miles Cook III Appeal**

Subject: 10/9/15 denial of permit application #2015-00960

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m. May 13, 2016 received State's Witness and Exhibit List. 5/13/16 received Appellant's Witness and Exhibit List. June 2, 2016 received motion to Continue Hearing. 6/8/16 issued letter granting Motion to Continue Hearing, rescheduling it for August 9, 2016 at 9 a.m. Hearing held August 9, 2016. Deliberations were held August 30, 2016. Appeal was denied on a 5-5 vote. December 2, 2016 issued draft Decision and Order to the Council for comments. 12/13/16 issued Decision and Order denying Petition for Appeal. January 10, 2017 received Appearance from Atty. Michael Tierney and Motion for Reconsideration/Rehearing. 1/17/17 received DES' Objection to Appellant's Motion for Reconsideration/Rehearing. 1/20/17 received Reply to DES' Objection to Motion for Reconsideration/Rehearing. 1/27/17 received DES' Sur-reply to Appellant's Reply to DES' Objection to Motion for Reconsideration/Rehearing. February 14, 2017 Council voted to deny Motion for Reconsideration. March 22, 2017 issued Ruling on Request for Reconsideration in accordance with the Council's decision of February 14, 2017.

### **III. Hearings or PHCs Pending**

#### **Docket No. 16-12 WtC – William M Ranney Appeal**

Subject: 6/23/16 Approval of Shoreland Permit #2016-01071

Hearing Officer: David Conley, Esq. appointed by AG on 11/8/16

Status: July 5, 2016 received Request for Appeal. 7/14/16 issued Insufficient Appeal letter. 7/19/16 received Revised Appeal. 7/20/16 issued Receipt of Appeal letter. Council accepted the appeal September 13, 2016. 9/23/16 received Motion to Intervene from Permittee. November 7, 2016 issued Appeal accepted letter. A Motion to Intervene has been filed. November 7, 2016 issued Appeal accepted letter. December 2, 2016 Hearing Officer granted Motion to Intervene. 12/12/16 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 9:30 a.m. 1/23/17 issued Pre-hearing Order scheduling hearing for April 11, 2017 at 9 a.m. 1/30/17 received Authorization of Representation from property owner-Deborah Forte. February 1, 2017 issued Order on Request for Clarification of Pre-hearing Order. 2/22/17 received Motion for Clarification on Pre-hearing Order. 2/24/17 received Appearance of Attorney John Cronin for the Intervenor and Intervenor's Witness and Exhibit List. 2/27/17 received Appellant's Witness and Exhibit List. March 10, 2017 received Motion to Include Deborah Forte as Appellant and Motion to Extend Deadlines and Hearing Date in Pre-hearing Order. 3/10/17 received Motion to Amend Applicant-Intervenor's Witness and Exhibit List and Motion for Clarification of Appellant's Witness and Exhibit List. 3/17/17 received Objection to Appellant's Motion to Extend Deadlines and Hearing Date in Pre-hearing Order. 3/21/17 received Motion to Bar Thomas Gregsak as Intervenor and Strike His Filings. 3/22/17 issued Decision and Order on Appellant's Motions to Add Additional Appellant and to Extend Deadlines and Hearing Date. Hearing to be held on May 9, 2017 at 9 a.m. 3/24/17 received Objection to Appellant's Motion to Bar Thomas Gregsak as Intervenor and Strike His Filings. 3/27/17 received Reply to Gregsak 3/24/17 Objection to Appellants' Motion to Bar. 3/28/17 issued letter ruling on Motion to Deny Thomas Gregsak Intervenor Status. April 7, 2017 received Motion for Relief For Orderly Proceedings In Case. 4/10/17 received Intervenor's Updated Witness and Exhibit list.

#### **Docket No. 16-18 WtC – Harold Lyon, Jr., Trustee Appeal**

Subject: 9/1/16 denial of after-the-fact request to replace and reconfigure dock, File #2014-02205

Hearing Officer: David Conley, Esq. appointed by AG on 01/20/17

Status: September 30, 2016 received Notice of Appeal and Appearance for Regina Nadeau. October 24, 2016 issued insufficient Appeal letter. November 16, 2016 received refiled Appearance for Attorney Nadeau and Revised Petition for Appeal. 11/28/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at their January 10, 2017 meeting. 01/05/17 received cover letter, Appearance of Jason Reimers for abutters and a Petition to Intervene. January 10, 2017 Council accepted the Appeal. 1/13/17 issued Appeal accepted letter. 1/30/17 issued Notice of Pre-Hearing conference scheduled for February 22, 2017 at 11 a.m. February 2, 2017 received Appearance from Atty. Allen Brooks for DES. 2/22/17 received Appearance from William Woodbury for the Appellant and issued Pre-hearing Order with a 2nd PHC scheduled for July 17, 2017 and the hearing for Sept. 12, 2017 at 9 a.m.

#### **IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

##### **Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. June 16, 2016 issued request for a status report of the pending appeal. 6/24/16 received appeal status update; still pursuing appeal.

##### **Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. June 16, 2016 issued request for a status report of the pending appeal. 6/24/15 received appeal status update from Ergendino Perrone. July 8, 2016 received appeal status update from Robert Gleason.

##### **Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. June 16, 2016 issued request for a status report of the pending appeal. 6/28/16 received appeal status update.

#### **V. Misc.**

##### **4. New Business**

The Appeal docket log has now been received and will be attached to the Annual Report. Chairman Kimball will finalize the Annual Report and send it to the clerk for distribution. Discussion was held regarding the Preliminary Notice of Appeal and Offer to Enter Into Settlement Discussions (PNA) process which is only for permitting decisions and not administrative orders.

Chairman asked the members to look at the rules and notice items that need to be corrected/updated. Look at the existing rules and the proposed rule changes that have been drafted by the 4 council chairs. The website is up to date. Also review any updates to the statute, anything revised since 2008.

The DES 2017 Session Bill Tracking Matrix was distributed. Chairman Kimball reminded all to watch for changes in the bills. Mary Ann Tilton, DES Administrator, was asked questions regarding dock bubblers and SB195.

##### **5. Old Business**

It was suggested looking into a checklist sheet for appeals.

6. **Next Meetings** –

May 9, 2017 at 8:00 a.m. with the William M. Ranney Appeal Hearing at 9 a.m.

7. **Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Gove. Motion passed unanimously.***

Meeting adjourned at 10:23 a.m.